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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER
SRC 09 020 51220

Date: **MAR 11 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a geodesist with Earth Resources Technology, Inc., under contract to the National Geodetic Survey (NGS) of the National Oceanic and Atmospheric Administration (NOAA). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement, a witness letter, and documentation relating to his work.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer --

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989). Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, whose benefit to the national interest would be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on October 28, 2008. In a statement accompanying the initial submission, counsel stated:

[The petitioner] specializes in Geodetic Science. He concentrates his research [on a] vertical reference system, which is used to accurately define the heights of any point on Earth. . . .

As testified by the leaders and peers in his field, [the petitioner's] investigations and research in gravimetric system have significant impacts on the field and are crucial step[s] towards establishing high resolution geoid. His scientific contributions are regarded as ground breaking by the scientific community. . . . Currently, [the petitioner's] research at NOAA is focused on improving the resolution and accuracy of the gravity data, which directly determines the geoid, by using the Inertial Navigation System (INS) and the Global Positioning System (GPS). . . .

With his rich academic background, high-value research and a tremendous record of past achievements, [the petitioner] becomes unique in his field and indispensable in various ongoing projects at NOAA.

The geoid, mentioned by counsel, is a mathematical model approximating global mean sea level.

The petitioner's initial submission included information about his academic credentials, association memberships, and scholarly publications. These materials collectively show that the petitioner is well qualified to work in his field, but the specific importance of his individual work is not self-evident from the documents. To establish the field's reaction to his work, the petitioner submitted copies of two articles that contain independent citations to the petitioner's published work. The petitioner also submitted Chinese-language database printouts that may document additional citations, but because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Six witness letters accompanied the filing of the petition. The most detailed letter is from [REDACTED] of the Geosciences Research Division at NGS. [REDACTED] stated:

[The petitioner] is an exceptional scientist engaged in Gravity research that is of great importance to the National Spatial Reference System (NSRS), especially the height datum. . . .

[A]ccurate orthometric heights, which is precisely what [the petitioner's] gravimetric work contributes to, is essential to determine the extent of flooding and storm surge inundation. In addition to this critical information, these heights are essential for the long term determination of changes in sea level. . . .

[The petitioner's] researches have been mainly involved with gravimetric geodesy, which provides that gravity data of the earth. . . . The accuracy and resolution of gravity directly determines the final quality of the geoid, and hence, the orthometric height. [The petitioner] has made tremendous progress improving the resolution of these gravity data. . . .

Currently, [the petitioner] is a geodesist . . . working in the GRAV-D (Gravity for the Re-definition of the American Vertical Datum) project which will bring more accurate orthometric heights throughout the United States. To achieve such an ambitious goal, it is important to have accurate and high resolution gravity data, which is the source of the geoid modeling. . . .

[The petitioner's] role in the project involves several very important aspects, including obtaining raw gravity observables from the INS/GPS system, analyzing and gridding the data, generating the Digital Elevation Model (DEM), and investigating new computation algorithms. He is developing a state-of-the-art data processing strategy to provide the most accurate gravity data with feasibly the highest spatial resolution for the Geoid determination.

then discussed the petitioner's work in technical detail. He credited the petitioner with showing "that high resolution is obtainable from an INS/GPS gravimetric system" and developing "an efficient alternative for gravity field modeling." asserted that, because of the petitioner's work, "more high resolution gravity data of the earth will be available, which will significantly improve the quality of the current global gravity field as well as the geoid."

at NGS, stated:

The mission of the National Geodetic Survey is to define, maintain and provide access to the National Spatial Reference System (NSRS; the official coordinate system defining, among other things, the latitude, longitude, various heights, gravity field, scale and orientation used in surveys and on maps). . . .

The current vertical datum (part of the NSRS dealing with heights) is inaccurate by decimeters to meters, which fails to give the American public the ability to map floodplains and prepare for flooding events. . . . The GRAV-D project hinges upon a little known scientific reality: that the height of a point is dependent upon knowledge of the minute changes to the gravity field near the point. The accurate determination of both heights and the gravity field at the earth is at the core of a field of study called "gravimetric geodesy." There are few scientists trained in this discipline worldwide. . . .

[The petitioner] developed creative new methods to integrate [INS and GPS] in a land vehicle, to obtain accurate gravity data with extremely high spatial resolution (2km). . . . [The petitioner] is the first geodesist to reach this high resolution level from a mobile system. Considering that satellite based gravity missions only have 100km spatial resolution at most, [the petitioner's] result will dramatically improve our understanding of the small features of the gravity field so necessary for mapping heights accurately. . . .

[The petitioner's] results with the NRL/NGS project will be applied to the GRAV-D project in all territories of the United States over the next few years. . . . Considering the

rarity of scientists capable of working in the field of gravimetric geodesy, [the petitioner's] talents are critical to the success of the NGS mission.

Assertions regarding the scarcity of trained geodesists are not persuasive with regard to the national interest waiver. The labor certification process is already in place to address such shortages. Similarly, the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question. *Matter of New York State Dept. of Transportation* at 218. In assessing eligibility for a national interest waiver, we give more weight to persuasive and objective evidence that shows the importance of the petitioner's individual contributions.

who supervised the petitioner's doctoral studies at the Ohio State University (OSU), praised the petitioner's ability to "obtain[] very high (~2 km) spatial resolution of gravity estimates accurate to about 2-3 parts per million, comparable to the best moving-base airborne systems in operation."

principal investigator for the GRAV-D project, stated that the petitioner "is now a core member of a team developing GRAV-D," and that "[w]ithout his efforts, our progress would be severely curtailed." added that he would hire the petitioner directly if the petitioner were a United States citizen eligible for federal employment.

of Curtin University of Technology, Perth, Australia, called the petitioner "extremely talented for a recently graduated geodetic scientist" and stated that the petitioner's design of "an artificial neural network . . . will have a big impact in the field of gravimetry." a senior geodesist in the Geodetic Survey Division of Natural Resources Canada, called the petitioner "a highly regarded young geodesist and one of a few highly-qualified professionals in the area of ground-vehicle and airborne gravity mapping worldwide. . . . These skills are very difficult to find in other geodesists." This assertion goes beyond the claim that there simply are not very many geodesists.

On April 15, 2009, the director issued a request for evidence (RFE), notifying the petitioner that his initial submission did not contain sufficient evidence of the importance and impact of his work to justify approval of the waiver application. In response, counsel asserted: "due to the fact that [the petitioner's] works were/are sponsored by the National Geospatial-Intelligence Agency (NGA), [the petitioner's] work has been limited as to its exposure in other countries. Because NGA is a US military intelligence agency, all government-related techniques are kept private within the U.S." The petitioner submitted a copy of an electronic mail message from the NGA, instructing the petitioner not to share a particular software code because "it's not in the best interests of the US Government to provide this freely to any other country." As a result, the petitioner has been able to present his findings, but has not always been able to share the methods underlying those findings.

Six new witness letters accompanied the petitioner's response to the RFE. stated: "One of [the petitioner's] main contributions is that he developed an efficient system to measure the gravity signal of the Earth. His system has been extensively used by the National Geospatial-

Intelligence Agency (NGA). I was deeply impressed by the performance of this system in his papers and dissertation."

In his second letter, [REDACTED] repeated the assertion that "there are literally no students who are US citizens pursuing research in physical geodesy." [REDACTED] asserted that the beneficiary's nonimmigrant status limits his ability to travel internationally to collaborate with Canadian colleagues or present his work at overseas conferences.

[REDACTED] of the University of Karlsruhe, Germany, stated: "I got to know [the petitioner] during a one month research stay at NOAA/NGS in August/September 2008 where I did research and in highly precise geoid determination." [REDACTED] contended that the petitioner "belongs to the few experts in the field of INS/GPS gravimetry worldwide."

[REDACTED] an assistant professor at Cornell University, praised the petitioner's compilation of "the various topographic maps of Alaska into a seamless whole" despite differences in resolution and other factors. [REDACTED] of the University of Alaska stated: "My students, technicians and myself had for years been frequently repeating, on smaller scales, the processes that [the petitioner] so elegantly accomplished for the entire region. To be able to work with [the petitioner's] DEM is a very significant savings in effort and resources for my research group."

The above two independent letters provide concrete and specific examples of the broader application of the petitioner's work, as does the next letter. [REDACTED] of the University of West Bohemia, Czech Republic, asserted that the petitioner's "results allow him to enjoy a worldwide recognition as a scientist who deserves a[n] honorable distinction." He stated:

In his recent publication in the Journal of Geodesy, he designed a novel neural network to successfully estimate gravity data from a combined GPS/INS. It was for the first time worldwide that the neural network had successfully been applied as a gravimetric system. Another anonymous reviewer of the article wrote that this method would have a revolutionary impact in the field of kinematic gravimetry. Moreover, his method has successfully been used by both the NGA and NGS. This is quite impressive, considering normally a new idea takes lots of time to be successfully employed in reality.

The director denied the petition on June 18, 2009. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, and quoted from several witness letters, but found "the most reliable indicator of your past impact in geodesy is the history of having your work cited by colleagues and others in the field." The director found that the petitioner's minimal citation history "is absolutely not consistent" with eligibility for the waiver.

On appeal, the petitioner explains that, because NGA has limited his ability to share specific data, as opposed to broad findings, other researchers have less ability to use the petitioner's methods, which in turn reduces opportunities to cite his work.

In a new letter, [REDACTED], now acting director of NGS, states:

Due to [the petitioner's] ongoing critical role in executing the mission of our agency, NGS has a vested interest in . . . having this application approved. . . .

This past year, he has focused on improving the models for Alaska, which have taken on increased importance with the melting of the Polar Regions and potential opening of the Northwest Passage for commercial shipping. The U.S. Coast Guard and the State of Alaska have both expressed great concern [at] the lack of quality models for this region. [The petitioner's] work is integrally tied to providing these improved models. . . .

All of [the petitioner's] research has culminated in the development of the new national geoid models for the NSRS due out this month. Upon completion of these models and publication to the web for use, documentation in journals of these various research efforts will commence. This prioritization of completing the models before publishing has been imposed on him by NGS. He should not be further penalized for supporting our mission.

Other materials in the record confirm that the petitioner's work has heavily emphasized presentation rather than more readily cited publication. Independent witness letters likewise show that the petitioner's presented work has deeply influenced the work of others, even without the citable detail of journal publications.

The director was correct in finding that citations are a strong gauge of the impact of an alien's published work. Citations are not, however, the only acceptable means of measuring that impact. Also, in this particular proceeding, the petitioner has demonstrated that much of his impact has come through means other than journal publications. Independent witnesses have provided credible, detailed and persuasive explanations of how the petitioner's work has influenced their own efforts, and NGS has consistently indicated that the petitioner is not only valued, but a vital participant in its ongoing efforts. We do not accept the assertion that a shortage is, itself, a strong factor in the petitioner's favor, but our rejection of this assertion does not undermine the other arguments made in this proceeding.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will withdraw the director's decision and approve the petition.

ORDER: The appeal is sustained and the petition is approved.